

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY MARCH 14, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1450

Introduced by Assembly Member Allen
(Principal coauthors: Assembly Members Mendoza and Swanson)
(Coauthors: Assembly Members Alejo, Ammiano, Beall,
Blumenfield, Fong, Hall, Solorio, and Wieckowski)

January 5, 2012

An act to add Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of the Labor Code, and to add Section 10285.6 to the Public Contract Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as amended, Allen. Employment: discrimination: status as unemployed.

Existing law contains provisions that define unlawful discrimination and employment practices by employers and employment agencies.

This bill would make it unlawful, unless based on a bona fide occupational qualification or any other provision of law, for an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to ~~take specified employment actions relating to employment status, as defined, including, among other things, refusing to hire a person because of that person's employment status and publishing~~ *publish* an advertisement or announcement for any job that includes provisions pertaining to an individual's current employment or employment status, as specified.

This bill would subject an employer, an employment agency, or a person who operates an Internet Web Site for posting jobs in this state who violates the above provisions to civil penalties that increase as the number of violations increase.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies.

This bill would provide that failure to comply with the requirements of the bill would constitute a breach of a contract entered into on or after January 1, 2013, and may be grounds for canceling, terminating, or suspending the contract, as specified, and debarring the contractor from eligibility for an award of future state agency contracts for a period not to exceed 3 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.95 (commencing with Section 1045)
2 is added to Part 3 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS
5 OF EMPLOYMENT STATUS
6

7 1045. For purposes of this chapter, the following definitions
8 apply:

9 (a) "Contractor" means a person who is a party to a contract
10 with a state governmental agency, including any department,
11 division, subcontractor, or other unit that is responsible for
12 performance under the contract. "Contractor" does not include a
13 state governmental agency.

14 (b) "Employer" means the state or any political or civil
15 subdivision of the state and any person, as defined in Section 18,
16 who directly or indirectly, or through an agent or any other person,
17 employs or exercises control over the wages, hours, or working
18 conditions of any person.

19 (c) "Employment agency" has the same meaning as defined in
20 Section 1812.501 of the Civil Code.

1 (d) "Employment status" means an individual's present
2 unemployment, regardless of the length of time that the individual
3 has been unemployed.

4 1046. (a) Unless based on a bona fide occupational
5 qualification, an employer, *an employment agency, or a person*
6 *who operates an Internet Web site for posting jobs in this state*
7 shall not do any of the following:

8 ~~(1) Exclude an applicant from the applicant pool at any stage~~
9 ~~of the hiring process or refuse to offer employment to an individual~~
10 ~~because of the individual's employment status.~~

11 ~~(2) Publish *publish* in print, on the Internet, or in any other~~
12 ~~medium an advertisement or announcement for any job that~~
13 ~~includes either of the following:~~

14 ~~(A)~~

15 ~~(1) A provision stating or indicating that an individual's current~~
16 ~~employment is a requirement for a job.~~

17 ~~(B)~~

18 ~~(2) A provision stating or indicating that an employer will not~~
19 ~~consider an applicant for employment based on that individual's~~
20 ~~employment status.~~

21 ~~(3) Direct or request that an employment agency take an~~
22 ~~individual's employment status into account in screening or~~
23 ~~referring applicants for employment.~~

24 ~~(b) Unless based on a bona fide occupational qualification, an~~
25 ~~employment agency shall not do any of the following:~~

26 ~~(1) Refuse to offer employment to an individual, exclude an~~
27 ~~individual from the applicant pool at any stage of the hiring~~
28 ~~process, or fail to refer an individual for employment because of~~
29 ~~the individual's employment status.~~

30 ~~(2) Limit, segregate, or classify individuals in any manner that~~
31 ~~may limit their access to information about jobs or referral for~~
32 ~~consideration of jobs because of their employment status.~~

33 ~~(3) Publish in print, on the Internet, or in any other medium an~~
34 ~~advertisement or announcement for any job that includes either of~~
35 ~~the following:~~

36 ~~(A) A provision stating or indicating that an individual's current~~
37 ~~employment is a requirement for a job.~~

38 ~~(B) A provision stating or indicating that an employer will not~~
39 ~~consider an applicant for employment based on that individual's~~
40 ~~employment status.~~

~~(e) Unless based on a bona fide occupational qualification, a person who operates an Internet Web site for posting jobs in this state shall not publish on that Internet Web site an advertisement or announcement for any job that includes:~~

~~(1) A provision stating or indicating that an individual's current employment is a requirement for a job.~~

~~(2) A provision stating or indicating that an employer will not consider an applicant for employment based on that individual's employment status.~~

~~(d)~~

~~(b) This chapter does not prohibit an employer, an employment agency, or a person operating an Internet Web site for posting jobs in this state from doing either of the following:~~

~~(1) Publishing, in print, on the Internet, or in any other medium, an advertisement or announcement for any job that sets forth other lawful qualifications for a job, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit, or other credential, or a minimum level of education or training or professional, occupational, or field experience.~~

~~(2) Printing or circulating or causing to be printed or circulated a publication, advertisement, or solicitation for a job vacancy that contains any provision stating that only applicants who are currently employed by that employer will be considered.~~

~~(e) An employer, an employment agency, or a person operating an Internet Web site for posting jobs in this state shall not do either of the following:~~

~~(1) Interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this chapter.~~

~~(2) Discriminate against any individual because the individual:~~

~~(A) Opposed any practice made unlawful by this chapter.~~

~~(B) Has caused to be instituted any proceeding under or related to this chapter.~~

~~(C) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter.~~

~~(D) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.~~

~~(f)~~

(c) An employer, an employment agency, or a person operating an Internet Web site for posting jobs in this state who violates this section shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for the first violation, five thousand dollars (\$5,000) for the second violation, and ten thousand dollars (\$10,000) for each subsequent violation, enforceable by the Labor Commissioner pursuant to the procedures specified in Chapter 4 (commencing with Section 79) of Division 1.

1047. (a) A contract entered into on or after January 1, 2013, between a state agency and a contractor who is an employer shall include an express or implied requirement that the contractor comply with the requirements of this chapter. Failure to comply with the requirements of this chapter, as determined by the Labor Commissioner, pursuant to subdivision (f) (c) of Section 1046, shall constitute a breach of the contract and may be grounds for canceling, terminating, or suspending the contract, and debarring the contractor from eligibility for future state agency contracts.

(b) In accordance with regulations adopted by the Division of Labor Standards Enforcement, and upon determining that a contractor who is an employer has violated this chapter, the Labor Commissioner may, after consulting with the contracting state agency, do any or all of the following:

(1) Direct the state agency to cancel, terminate, or suspend the contract, or any segregable portion thereof.

(2) Debar the contractor from eligibility for an award of a future state agency contract for a period not to exceed three years.

1048. This chapter does not preclude an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state from doing any of the following:

(a) Obtaining information regarding an individual's employment, the dates of employment, or the reasons for the separation from employment.

(b) Having knowledge of a person's employment status.

(c) Considering an individual's employment history or the reasons underlying an individual's employment status.

(d) Refusing to offer employment to a person because of the reasons underlying an individual's employment status.

(e) Otherwise making employment decisions pertaining to that individual.

1 SEC. 2. Section 10285.6 is added to the Public Contract Code,
2 to read:
3 10285.6. A contractor, as defined in Section 1045 of the Labor
4 Code, who has been debarred by the Labor Commissioner pursuant
5 to Section 1047 of the Labor Code for a period not to exceed three
6 years; shall be ineligible during that time for an award of a contract
7 pursuant to this chapter.

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